

In the High Court of Judicature at Madras

Date : 20.12.2006

Coram :

The Hon'ble Mr. Justice P. JYOTHIMANI

Writ Petition No: 19750 of 2006

M.P.No.1 of 2006 & WVMP.No.2 of 2006

S. Ekambaram,
General Cariappa Higher
Secondary School,
Saligramam,
Chennai - 600 093.

.... Petitioner

-vs-

1. The Chief Educational Officer,
Panagal Building,
Saidapet,
Chennai - 600 008.

2. The District Educational Officer,
Chennai South,
Chennai - 600 008.

3. General Cariappa Higher
Secondary School,
rep. by its Secretary,
School Committee,
Saligramam,
Chennai - 600 093.

... Respondents

Writ petition under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to re-employ the petitioner as B.T. Assistant in the 3rd respondent school till the end of the academic year i.e. 31.05.2007.

For petitioner : Mr. D. Rajagopal
For resp. 1 and 2 : Mr. P. Gopiraja,
Government Advocate

For 3rd respondent : Mr. G. Rajagopal,
Senior counsel for
Mr. G. Annamalai

O R D E R

The writ petition is filed for a direction against the respondent to re-employ the petitioner as B.T. Assistant in the third respondent school
<https://hcservices.ecourts.gov.in/hcservices/>

till the end of the academic year namely 31.05.2007. The petitioner was appointed as a physical education teacher in Thiru. Vi. Ka. Higher Secondary School, Shenoy Nagar, Chennai, with effect from 11.06.1997 in the place of the previous incumbent who had retired. Thereafter, he was promoted as B.T. Assistant in the third respondent school which is an aided school. As per the date of birth of the petitioner, the date of his superannuation falls on 06.06.2006. In the Government Order passed in G.O. Ms. No: 452 dated 24.03.1970 any teacher who retires in the middle of the academic year by virtue of superannuation is eligible for re-employment till the end of the academic year. This has been reiterated in another Government Order in G.O. Ms. No: 1643 dated 27.10.1988. Therefore, according to these Government Orders, if the petitioner satisfies the conditions mentioned therein, he would be eligible to continue to work till the end of the academic year i.e. upto 31.05.2007. A reading of G.O. Ms. No: 452 Education dated 27.03.1970 shows that in respect of the teachers who attain superannuation in the middle of the academic year, their services shall be continued till the end of the academic year subject to the following conditions, namely,

- (1) that their work and conduct are satisfactory;
- (2) that they are physically found fit for further service and
- (3) that no disciplinary proceedings are pending against them.

According to the petitioner since there was no disciplinary proceedings pending against him, he is entitled to be continued in service till the end of the academic year i.e. 31.05.2007.

2. When this writ petition came up for admission, based on these averments, this Court granted an order of interim injunction which has been continued from time to time. To vacate the interim injunction granted by this Court, the third respondent school has filed a miscellaneous petition on 03.08.2006. In the affidavit filed in support of this petition, the third respondent school management has categorically stated that during the three year term of the writ petitioner in their school, his conduct and character was not satisfactory. That apart, the petitioner has submitted medical certificate to show that he is an heart patient and the fitness certificate now produced itself is questionable in nature. It is also the specific case of the third respondent school that a charge memo had been issued to the petitioner and the petitioner has in fact admitted almost all the charges levelled against him in his explanation and requested permission from the third respondent to retire peacefully. Some of the charges framed against the petitioner which are pending are that, as examiner he used to give excess marks for even wrong and substandard answers at the request of the students, which shows that he is lacking even the basic knowledge of a teacher. It is the specific case of the third respondent that the petitioner has in fact written letter to the third respondent admitting that he had given more marks to the students who have given wrong answers at their request and that it is on that basis the disciplinary proceeding has been initiated and an explanation has been submitted.

3. I have heard the learned counsel appearing for the writ petitioner, learned Government Advocate as also the learned senior counsel appearing for the third respondent. As rightly pointed out by the learned senior counsel appearing for the third respondent, it is for the management to

take a decision about the conduct and character of a teacher for the purpose of giving the benefit to continue beyond the period of superannuation. In the present case, the fact that there is a disciplinary proceeding pending against the petitioner is not in dispute now. However, it is unfortunate that the petitioner has not even chosen to make a mention in the affidavit about the pendency of such charges against him. In fact, it was based on the averments made in the writ petition as if there was no charge pending against the petitioner and that fitness certificate has been given, this Court has granted an order of interim injunction, based on which the writ petitioner is continuing as a teacher in the third respondent school till today. That only shows that the respondents have given respect to the order of this Court based on which the writ petitioner was permitted to continue in service.

4. The right of employment in similar circumstances was considered by this Court in the decision reported in 2006 (4) M.L.J. 1173 (R. Mark vs. District Elementary Educational Officer, Vellore, Vellore District and others). Ofcourse that was a case which relates to a headmaster. On the basis that the post of headmaster is of pivotal importance in a school; a bad headmaster can spoil the entire institution, this Court held that the right to choose the Headmaster is perhaps the most importance fact of the Management's right to administer a school. However, while dealing extensively about the right of re-employment and also considering various Government Orders including G.O. Ms. No: 452 dated 24.03.1970, wherein three conditions, which I have narrated earlier, were prescribed as conditions precedent for the purpose of extension of the period of service on the date of superannuation, this Court has ultimately held in paragraph 13 as follows :-

" 13. In view of the established fact that the petitioner's character and conduct are not satisfactory, which are the essential requirements as per the Government Orders as well as the above referred decisions of the Honourable Supreme Court and the petitioner's post being Headmaster, I hold that the petitioner is not entitled to get re-employment and the impugned order dated 30.06.2006 passed by the third respondent, relieving the petitioner from service with effect from 30.6.2006 is legally sustainable and there is no merits in the writ petition. "

Therefore, it is clear that whether the conduct and character of a teacher is satisfactory for the purpose of extending the period of service beyond the period of superannuation is for the management to decide on the facts and circumstances of the case. This Court would not interfere in such decision unless it is shown that such decision has been taken by the management in an arbitrary manner. On the facts of the case on hand, it is clear that disciplinary proceeding initiated against the writ petitioner, based on the charge framed are pending against the petitioner, and it is stated by the third respondent that those charges are serious in nature and, therefore, based on these facts, the third respondent has taken a decision that it shall not permit the petitioner to continue in service beyond the date of superannuation. In such circumstances, it is not for this Court to state otherwise. In this regard, learned counsel appearing for the writ petitioner would bring to the notice of this Court

a decision of the Hon'ble Apex Court reported in 2006 (1) L.W. 157 (P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board). In my considered opinion, this decision has no relevance to the case on hand, for in that case disciplinary proceedings were initiated 10 years after the occurrence took place and in those circumstances, the Hon'ble Supreme Court has quashed the charge memo.

5. In view of the above said facts, I have no hesitation to come to the conclusion that this is not a fit case where the petitioner, as a matter of right, can claim a right of employment which is normally given to a teacher who retires in the middle of the academic year when ultimately, it is for the management to take a decision keeping in view the conduct and character of the person who is seeking re-employment. Therefore, the writ petition is dismissed. The order of interim injunction granted by this Court earlier stands vacated and consequently all the connected miscellaneous petitions are closed. No costs. At this stage, the learned counsel appearing for the writ petitioner would submit that by virtue of the interim order granted by this Court on 24.06.2006, the writ petitioner has continued to serve as a teacher in the third respondent school till today and hence, suitable orders may be passed by this Court regarding the salary payable to the writ petitioner, etc. It is open to the writ petitioner to work out his remedy in the manner known to law.

Gp

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

Copies to :

1. The Chief Educational Officer,
Panagal Building,
Saidapet,
Chennai - 600 008.
2. The District Educational Officer,
Chennai South,
Chennai - 600 008.
3. The Secretary,
General Cariappa Higher Sec. School,
SchoolCommittee,
Saligramam, Chennai-93.

+One cc to Govt pleader SR 64683

+ One ccto G. Annamalai Advocate sR 64329

+ Onne cc to Mr. /d. Rajagopal, Advocate in SR 64162

W.P. No: 19750/2006

20.12.2006